

EXPLANATORY STATEMENT

Defence Force Remuneration Tribunal Determination No. 3 of 2019, Salaries – Officer Aviation Pay Structure – Rotary Wing Aviation Officers – Amendment

This Determination amends Defence Force Remuneration Tribunal (DFRT) Determination No. 2 of 2017, *Salaries* (the Principal Determination), made under section 58H of the *Defence Act 1903* (the Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act). The Principal Determination sets out provisions dealing with salary for members of the Australian Defence Force (ADF).

The purpose of this Determination is to introduce Navy rotary wing pilots and aviation warfare officers and Army rotary wing pilots into the Officer Aviation Pay Structure.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 of this Determination provides that the Determination commences on 1 July 2019. While the DFRT and ADF make every effort to avoid retrospective commencement dates, subsection 58H(8) of the Act, makes provision for retrospectivity as long as the instrument meets the criteria set out in that subsection. The ADF has confirmed that the instrument does meet those conditions.

Section 3 provides that this instrument has authority under section 58H of the *Defence Act 1903*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 sets out amendments to DFRT Determination No. 2 of 2017, *Salaries*

Section 1 removes the term and definition for 'Air Force Officer Aviation member' from the table in section A.1.12 of the Principal Determination. This table provides a list of terms and definitions which apply to Part B Division 3 of the Principal Determination. With Navy and Army aviation officers being introduced into the Officer Aviation Pay Structure by this Determination, a tri-Service term and definition are inserted into this table by section 4 of this Determination.

Section 2 substitutes the definition for 'legacy employment category' in the table in section A.1.12 of the Principal Determination. Only the header phrase for paragraph a. and b. have been modified to be consistent with the wording used in other definitions in this table. The changes are policy neutral and do not change the meaning or applications of the term.

Section 3 amends the reference to Division 3 in section A.1.12 which provides definitions specific to Specialist Officers. The section has been amended to include specific annexes in which the definitions are used, those being Annex B.3.A, B.3.B, B.3.C and B.3.D of the Principal Determination.

Section 4 inserts two new terms and their definitions into the table in section A.1.12 of the Principal Determination, as a consequence of Navy and Army aviation officers being introduced into the Officer Aviation Pay Structure by this Determination. The definition for 'Officer Aviation' now includes the two new competency streams, aviation warfare officer and rotary wing pilot.

The new tri-Service term, 'Officer Aviation member', has had the previous definition for 'Air Force Officer Aviation member' expanded in paragraph a (which set out the rank range eligibility criterion) to now prescribe the rank range relevant to officers of the Navy (subparagraph i.) and Army (subparagraph ii).

Section 5 removes the words 'Air Force' from paragraph B.3.2.f of the Principal Determination. This section provided a list of officers for whom Division 3 applies. The removal of these descriptive words, means that the term is no longer confined to members of Air Force, but may now apply to officers in Navy and Army as well.

Section 6 substitutes the entire section B.3.7 in the Principal Determination which set out the rate of salary for an Air Force Officer Aviation member. The section header and the rule have been modified to remove confinement of application to Air Force officers, and now made applicable to all Officer Aviation members in the ADF, regardless of Service.

Subsection 1 provides that an Officer Aviation member is to be paid a rate of salary for their Officer Aviation increment (designed by 'OA[number]') and their rank in either Part 3 of Schedule B.14 for members of the Permanent Force, or Part 4 of Schedule B.14 for members of the Reserves.

Subsection 2 provides that Division 4A of the Defence Determination 2016/19, Conditions of service, as in force from time to time, may vary the rate of salary for an Officer Aviation member in any of the listed circumstances:

- paragraph a. refers to a member who was an Other Rank member immediately before becoming an Officer Aviation member – refer section 3.2.47G Chapter 3 Part 2 Division 4A of Defence Determination 2016/19;
- paragraph b. refers to an officer in another salary structure immediately before becoming an Officer Aviation member – refer section 3.2.47G Chapter 3 Part 2 Division 4A of Defence Determination 2016/19
- paragraph c. refers to an officer who was an aviation specialist immediately before becoming an Officer Aviation member – refer section 3.2.47G Chapter 3 Part 2 Division 4A of Defence Determination 2016/19
- paragraph d. refers to an Air Force officer who was reduced in rank – refer section 3.2.47G Chapter 3 Part 2 Division 4A of Defence Determination 2016/19

Section 7 substitutes the entire section B.3.8 of the Principal Determination which set out how an Air Force Officer Aviation member could advance through the pathways and competency streams contained within the Officer Aviation Pay Structure. The provisions of section B.3.8 have been modified to include Navy's rotary wing pilot and aviation warfare officer competency streams in both its Command pathway and Specialist pathway, as well as Army's rotary wing pilot competency stream in its Generalist pathway and Specialist pathway.

Subsection 1 provides that the increment ranges available in the Command pathway are set out in Annex B.3.A, the increment ranges in the Specialist pathway can be found in Annex B.3.B, the increment ranges in the Staff pathway can be found in Annex B.3.C, and the increment ranges in the Generalist pathway can be found in Annex B.3.D.

Subsection 2 specifies that an Officer Aviation member in the Specialist pathway may only advance through their competency stream by a single increment level for the member's Service, competency stream and rank as provided in Annex B.3.B.

Subsection 3 specifies that an Officer Aviation member in the Command and Generalist pathways may only advance through their competency stream by a single increment or double increment level as prescribed under the relevant annexes for the relevant Command (Annex B.3.A) and Generalist pathways (Annex B.3.D).

Subsection 4 provides that an Officer Aviation member in the Staff pathway may only advance to a higher increment in their competency stream on promotion, as there are only single Officer Aviation (OA) increments for each rank and competency stream in Annex B.3.C.

Subsection 5 provides a specific provision for a Navy Aviation Officer who is in the Command Pathway and holding the rank of Commander, in which such a member may not exceed Officer Aviation increment OA28 unless the member has an aviation command appointment.

Subsection 6 provides specific provisions for an Army Aviation Officer who is in the Generalist Pathway and for whom the following conditions and increments apply:

- a) If the Army Aviation Officer holds the rank of Lieutenant Colonel and has not been appointed to Unit Command—the maximum increment is OA28.
- b) If the Army Aviation Officer holds the rank of Major and has not been appointed to Sub-Unit Command—the maximum increment is OA23.
- c) If the Army Aviation Officer holds the rank of Captain and has not been appointed to Troop Command—the maximum increment is OA17.

Section 8 modifies the header of section B.3.9 of the Principal Determination.

Section 9 substitutes a more accurate cross reference to Chapter 3 Part 2 Division 4A of Defence Determination 2016/19, Conditions of service.

Section 10 removes subsection B.3.9.3 of the Principal Determination which provided that an Air force Officer Aviation member could cease to be an Officer Aviation member for disciplinary reasons or administrative sanction as imposed or provided under other acts and instruments. This provision has been retained (albeit in a different manner) and is now covered by the provision set out in a new section B.3.10, introduced by section 11 of this Determination.

Section 11 introduces a new section B.3.10 to the Principal Determination. This section provides that when an officer ceases to be an Officer Aviation member, and therefore leaves the Officer Aviation Pay Structure, the member will be remunerated under Division 2 if they are an Officer, or Division 3 if they are an aviation specialist (as defined in the table at section A.1.12 of the Principal Determination). It has been made express that if a member ceases to be an Officer Aviation member, such a member must not be placed in any of the listed employment categories and paid the associated rate of salary under Division 2. In addition, such a member must not be placed in the aviation specialist stream and paid a rate of salary under sections B.3.5 to B.3.9 of the Principal Determination.

Schedule 2 sets out amendments to DFRT Determination No. 2 of 2017, *Salaries*

Section 1 substitutes a revised Annex B.3.A (Officer Aviation Pay Structure Command Pathway – increment ranges) of the Principal Determination with one which includes the increment ranges for Navy's Rotary Wing Pilot competency stream and Aviation Warfare Officer competency stream. Part 1 is reserved for Navy's Command Pathway and Part 2 is reserved for Air Force's Command Pathway.

Schedule 3 sets out amendments to DFRT Determination No. 2 of 2017, *Salaries*

Section 1 substitutes a revised Annex B.3.B (Officer Aviation Pay Structure Specialist Pathway – increment ranges) of the Principal Determination with one which includes the increment ranges for Navy's Rotary Wing Pilot competency stream and Aviation Warfare Officer competency stream, and Army's Rotary Wing Pilot competency stream. Part 1 is reserved for Navy's Specialist Pathway, Part 2 is reserved for Army's Specialist Pathway, and Part 3 is reserved for Air Force's Specialist Pathway.

Schedule 4 sets out amendments to DFRT Determination No. 2 of 2017, *Salaries*

Section 1 inserts a new Annex B.3.D (Officer Aviation Pay Structure Generalist Pathway – increment ranges) after Annex B.3.C of the Principal Determination. The new Annex B.3.D provides the increment ranges for Army's Rotary Wing Pilot competency stream in the Generalist Pathway.

Schedule 5 sets out amendments to DFRT Determination No. 2 of 2017

Sections 1 to 8 of this Schedule amend various bits in Schedule B.14 of the Principal Determination to remove references which would limit their meaning or application to just Air Force, and now make them relevant to Officer Aviation members in the ADF.

Schedule 6 sets out transition provisions

Sections 1 to 5 of this Schedule provide the transition provisions for Navy and Army aviation officers which will occur on the date of commencement of this Determination.

Section 1 makes express that reference to 'Officer Aviation increment' means an increment under Part 3 or Part 4 of Schedule B.14 of the Principal Determination.

Section 2 provides the transition provisions for a Navy officer.

Subsection 1 provides definitions for terms used in this section. Paragraph a. provides the meaning for Pilot employment category, and paragraph b. provides the meaning for Maritime Aviation Warfare Officer, both of which underpin the provisions set out in this section for Navy officers. Paragraph c makes express that where a member holds a command appointment, the member's 'years in rank' in the table at Annex B.3.A, correlates to the member's Officer Aviation increment under subsection 6 of this section.

Subsection 2 makes express that this section applies to an officer in the Navy who meets both of the conditions set out in the two paragraphs on the day immediately before the commencement of this Determination.

Paragraph a. sets out the first of two conditions: subparagraph i. applies to a member who holds a rank between Lieutenant and Captain, inclusive, and is on the top increment for their rank and pay grade under Schedule B.3 of the Principal Determination; and subparagraph ii. applies to a member who holds a rank of either Lieutenant or Lieutenant Commander, and Director Navy People Career Management

Agency decides this section should apply to them. The decision maker, Director Navy People Career Management Agency, is required to assure equitable treatment of all the relevant people for transition due to the absence of consistent transition criteria for a member's career and Graded Officer Pay Structure (GOPS) remuneration profile. The decision maker is therefore required to assess a Navy officer's projected career and GOPS remuneration profile, based on the member's forecast rank increment advancements and skill grade increases that would apply to them as a Graded Officer Pay Structure (GOPS) pilot or maritime aviation warfare officer. This ensures a member would not be disadvantaged financially in transition to the Officer Aviation Pay Structure.

Paragraph b. sets out the second of two conditions: the member must be in either a Pilot or Maritime Aviation Warfare Officer employment category of the GOPS.

Subsection 3 places a member who has met the conditions set out in subsection 2 in the Officer Aviation Pay Structure. Such a member will be placed in the Command Pathway and either the Rotary Wing Pilot competency stream (for a member who was a Pilot) or the Aviation Warfare Officer competency stream (for a member who was a Maritime Aviation Warfare Officer) of the Officer Aviation Pay Structure.

Subsections 4 to 7 set out the methodology used to decide the relevant Officer Aviation increment that should apply to the member. Subsection 4 provides that a member who holds the rank of Lieutenant or Lieutenant Commander is placed on an Officer Aviation increment which has the associated rate of salary that is equal to or next above the member's rate of salary immediately before the commencement of this Determination. The resulting increment may be outside the increment range for the member's competency stream and rank.

Subsection 5 provides that a member who holds the rank of Commander and is not aviation command qualified is placed on an Officer Aviation increment which has the associated rate of salary that is equal to or next above the member's rate of salary immediately before the commencement of this Determination. The resulting increment may be outside the increment range for the member's competency stream and rank.

Subsection 6 deals with a member who holds the rank of Commander and is aviation command qualified. This member is placed on an Officer Aviation increment according to the relevant of the following:

Paragraph a. prescribes the Officer Aviation increment of OA29 if the member currently holds a command appointment, has held that appointment for 12 months or less, and paragraph c. does not apply.

Paragraph b. prescribes the Officer Aviation increment of OA30 if the member currently holds a command appointment, and has held that appointment for 12 months or more.

Paragraph c. prescribes the Officer Aviation increment of OA30 if the member has at some point in the past held a command appointment. This placement recognises the enduring value of command throughout a member's career.

The Officer Aviation increments prescribed by this subsection correspond to the specified command increments in the Officer Aviation Pay Structure at the Commander rank.

Subsection 7 provides that a member who holds the rank of Captain is placed on Officer Aviation increment OA37.

Section 3 provides the transition provisions for an Army officer in the generalist aviation career stream without a command appointment.

Subsection 1 makes express that this section applies to an officer in the Army who meets all of the conditions set out in the paragraphs on the day immediately before the commencement of this Determination.

Paragraph a. requires the member to hold a rank between Lieutenant and Colonel, inclusive.

Paragraph b. requires the member to be in a Graded Officer pay Structure pilot employment category under Schedule B.3 of the Principal Determination, that being either Pilot – Competency Progression or Pilot – Time Based progression. There is an important point of difference between the two classes of members under this eligibility condition, that being, that those who are in the Pilot – Time Based employment category must also agree to transfer to the Officer Aviation Pay Structure.

Paragraph c requires the member to have graduated from the Regimental Officer Basic Course – Program (aviation).

Paragraph d. makes clear that the member cannot have held a troop, sub-unit or unit command appointment at any point in the past.

Paragraph e. requires the member to be in the 'generalist stream' of the Army Aviation Officer Employment Specification. The Army Aviation Officer Employment Specification governs Army's pilots from a career management perspective. Army's Aviation Personnel Capability Management Board decides whether an Army pilot will be career managed in the 'generalist stream' or the 'specialist stream'. This is an internal career/administrative decision point that is not reliant on the operation of the Officer Aviation Pay Structure; rather, the Officer Aviation Pay Structure supports Army's career management of pilots in a remunerative sense. The 'generalist stream' of the Army Aviation Officer Employment Specification is separate from the 'Generalist Pathway' of the Officer Aviation Pay Structure.

Paragraph f. requires that the member's rate of salary in the Generalist Pathway and the Rotary Wing Pilot competency stream for the relevant Officer Aviation increment as set out in subsections 2 to 6, is equal to or higher than the member's rate of salary for their rank, increment and pay grade in the GOPS.

Subsections 2 to 6 set out the methodology used to decide the relevant Officer Aviation increment that should apply to the member.

Subsection 2 applies to a member who holds the rank of Lieutenant. Paragraph a. prescribes the Officer Aviation increment of OA1 if the member has less than 12 months experience at this rank. Paragraph b. provides an additional Officer Aviation increment above OA1 for each 12 months completed as a Lieutenant, up to a maximum of OA4. There is no provision for pro rata recognition of experience at rank.

Subsection 3 applies to a member who holds the rank of Captain. Paragraph a. prescribes the Officer Aviation increment of OA8 if the member has less than 12 months experience at this rank. Paragraph b. provides an additional Officer Aviation increment above OA8 for each 12 months completed as a Lieutenant, up to a maximum of OA17, and in accordance with the increment advancements for Generalist Pathway, pilot competency stream, and rank of Captain as prescribed in Annex B.3.D. There is no provision for pro rata recognition of experience at rank.

Subsection 4 applies to a member who holds the rank of Major. Paragraph a. prescribes the Officer Aviation increment of OA21 if the member has less than 12 months experience at this rank. Paragraph b. provides an additional Officer Aviation increment above OA21 for each 12 months completed as a Major, up to a maximum of OA23. There is no provision for pro rata recognition of experience at rank.

Subsection 5 applies to a member who holds the rank of Lieutenant Colonel. Paragraph a. prescribes the Officer Aviation increment of OA27 if the member has less than 12 months experience at this rank. Paragraph b. prescribes the Officer Aviation increment of OA28 if the member has 12 months or more experience at this rank.

Subsection 6 applies to a member who holds the rank of Colonel. Paragraph a. prescribes the Officer Aviation increment of OA35 if the member has less than 12 months experience at this rank. Paragraph b. prescribes the Officer Aviation increment of OA36 if the member has 12 months or more experience at this rank.

Subsection 7 places a member who has met the conditions set out in subsection 1 in the Officer Aviation Pay Structure. Such a member will be placed in the Generalist Pathway and the Rotary Wing Pilot competency stream of the Officer Aviation Pay Structure.

Section 4 provides the transition provisions for an Army officer in the generalist aviation career stream with a command appointment.

Subsection 1 makes express that for the purpose of this section, the member's 'years in rank' under Annex B.3.D of DFRT Determination No. 2 of 2017, *Salaries*, represents the time the member has completed in their current rank or the time the member has completed in their current command appointment, and corresponds to the member's Officer Aviation increment.

Subsection 2 makes express that this section applies to an officer in the Army who meets all of the conditions set out in the paragraphs on the day immediately before the commencement of this Determination.

Paragraph a. requires the member to hold a rank between Captain and Lieutenant Colonel, inclusive.

Paragraph b. requires the member to be in a Graded Officer pay Structure pilot employment category under Schedule B.3 of the Principal Determination, that being either Pilot – Competency Progression or Pilot – Time Based progression. There is an important point of difference between the two classes of members under this eligibility condition, that being, that those who are in the Pilot – Time Based employment category must also agree to transfer to the Officer Aviation Pay Structure.

Paragraph c. requires the member to have graduated from the Regimental Officer Basic Course – Program (aviation).

Paragraph d. requires the member to have held in the past, or currently holds, a troop command, a sub-unit command or a unit command appointment.

Paragraph e. requires the member to be in the ‘generalist stream’ of the Army Aviation Officer Employment Specification. The ‘generalist stream’ of the Army Aviation Officer Employment Specification is separate from, and not to be confused with, the ‘Generalist Pathway’ of the Officer Aviation Pay Structure as previously stated.

Paragraph f. requires that the member’s rate of salary in the Generalist Pathway and the Rotary Wing Pilot competency stream for the relevant Officer Aviation increment as set out in subsections 3 to 5, is equal to or higher than the member’s rate of salary for their rank, increment and pay grade in the GOPS.

Subsections 3 to 5 set out the methodology used to decide the relevant Officer Aviation increment that should apply to this member.

Subsection 3 applies to a member holding the rank of Captain. This subsection prescribes that a member who has completed six years or more as a Captain, and either holds a troop command appointment (no time period is prescribed) or has held a troop command appointment for 12 months or more at some point in the past, has an Officer Aviation increment of OA19.

Subsection 4 applies to a member holding the rank of Major. Paragraph a. prescribes that a member who holds, or has held, a sub-unit command appointment for less than 12 months (either at some point in the past, or in their current command appointment), has the Officer Aviation increment of OA24. Paragraph b. prescribes that a member who holds, or has held, a sub-unit command appointment for 12 months or more (either at some point in the past, or in their current command appointment), has an Officer Aviation increment of OA25.

Subsection 5 applies to a member holding the rank of Lieutenant Colonel. Paragraph a. prescribes that a member who holds, or has held, a unit command appointment for less than 12 months (either at some point in the past, or in their current command appointment), has the Officer Aviation increment of OA29. Paragraph b. prescribes that a member who holds, or has held, a unit command appointment for 12 months or more (either at some point in the past, or in their current command appointment), has an Officer Aviation increment of OA30.

Subsection 6 places a member who has met the conditions set out in subsection 2 in the Officer Aviation Pay Structure. Such a member will be placed in the Generalist Pathway and the Rotary Wing Pilot competency stream of the Officer Aviation Pay Structure

Section 5 provides the transition provisions for an Army officer in the specialist aviation career stream.

Subsection 1 makes express that this section applies to an officer in the Army who meets all of the conditions set out in the paragraphs on the day immediately before the commencement of this Determination.

Paragraph a. sets out the first condition: the member must either hold the rank of Major and held that rank for eight years or more, or hold the rank of Lieutenant Colonel and held that rank for four years or more.

Paragraph b. sets out the second condition: the member must be in a Graded Officer pay Structure pilot employment category under Schedule B.3 of the Principal Determination, that being either Pilot – Competency Progression or Pilot – Time Based progression. There is an important point of difference between the two classes of members under this eligibility condition, that being, that those who are in the Pilot – Time Based employment category must also agree to transfer to the Officer Aviation Pay Structure.

Paragraph c. requires the member to have qualified as a test pilot or flight instructor, and has held the qualification for the relevant of the following periods: for a Major, the member must have held that qualification for eight years or more, and for a Lieutenant Colonel, the member must have held that qualification for four years or more.

Paragraph d. requires the member to be in the 'specialist stream' of the Army Aviation Officer Employment Specification. The Army Aviation Officer Employment Specification governs Army's pilots from a career management perspective. Army's Aviation Personnel Capability Management Board decides whether an Army pilot will be career managed in the 'generalist stream' or the 'specialist stream'. This is an internal career/administrative decision point that is not reliant on the operation of the Officer Aviation Pay Structure; rather, the Officer Aviation Pay Structure supports Army's career management of pilots in a remunerative sense. The 'specialist stream' of the Army Aviation Officer Employment Specification is separate from the 'Specialist Pathway' of the Officer Aviation Pay Structure.

Subsection 2 places a member who has met the conditions set out in subsection 1 in the Officer Aviation Pay Structure. Such a member will be placed in the Specialist Pathway and the Rotary Wing Pilot competency stream of the Officer Aviation Pay Structure. Paragraph a. prescribes that where a member holding the rank of Major has met the relevant conditions for the rank set out in subsection 1, the member has an Officer Aviation increment of OA28. Paragraph b. prescribes that where a member holding the rank of Lieutenant Colonel has met the conditions for the rank set out in subsection 1, the member has an Officer Aviation increment of OA30.

To remove doubt, the transition provisions set out in Section 5 of this Schedule do not apply to the following members:

- A member holding the rank of Captain, and who has held that rank for greater than seven years and is a qualified test pilot or flight instructor;
- A member holding the rank of Major, has held that rank for less than eight years, and who has held their qualification as test pilot or flight instructor for less than eight years; and
- A member holding the rank of Lieutenant Colonel, has held that rank for less than four years, and who has held their qualification as test pilot or flight instructor for less than four years.

The transition provisions for these members will be set out in a separate determination made by the Defence Force Remuneration Tribunal.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

Authority: Section 58H of the
Defence Act 1903